

IN THE UNITED STATES COURT
OF FEDERAL CLAIMS

BLUE CROSS OF CALIFORNIA, *et al.*,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

No. 20-606 C
Judge Bonilla

JOINT STATUS REPORT

Pursuant to the Court's August 31, 2022 order (ECF No. 36), the parties respectfully submit this joint status report to request that the Court continue the stay in these proceedings.

This case is currently stayed because the Government is working with a number of cost-sharing reduction ("CSR") Plaintiffs to determine whether they may efficiently resolve this and other pending CSR matters without further litigation or at least streamline these cases. The parties to a number of these CSR cases, including this one, have stipulated to entry of partial final judgment as to the CSR amounts owed by the Government for 2017. On September 27, 2022, with leave of this Court, the Plaintiffs filed an Amended Complaint to recover CSR payments due to Plaintiffs for 2018-21. On August 31, 2022, the Court ordered the parties to file a joint status report on or before October 31, 2022, and every 60 days thereafter.

The parties believe that the current continued stay in this case will provide more time for the parties to continue their discussions about resolving the damages amounts owed by the Government in the pending CSR cases, including this one, for benefit years

2018 and beyond without further litigation. On April 28, 2022, the Government provided its substantive response to the CSR Plaintiffs' proposed settlement methodology for CSR damages owed for benefit years 2018 and beyond. On May 20, 2022, counsel for the Government and for a number of CSR Plaintiffs, including this case, participated in a teleconference with actuaries to discuss the proposed settlement methodology and to share relevant data. On May 23, 2022, CSR Plaintiffs responded to the Government's April 28, 2022 letter. Thereafter, the parties have convened by phone multiple times, and the Government produced certain settlement-related data and other information to the CSR Plaintiffs on July 22, 2022, which the parties hope will continue to advance our settlement discussions. Most recently, the parties participated in a settlement-related call on September 1, 2022, and the CSR Plaintiffs followed that call with a letter to the Government on September 15, 2022. The Government has been reviewing and discussing internally the CSR Plaintiffs' letter. Specifically, the Government has been exploring possible new sources of information and ways to estimate where information does not appear to be available. CSR Plaintiffs expect to receive the response this week. The complexity of the CSR cases and the number of interested stakeholders necessitate that the parties be afforded additional time to pursue this mutual attempt to resolve the damages issues in this case without further litigation. Good cause therefore exists to continue the stay in this case for CSRs due to Plaintiffs for benefit years 2018 and beyond.

Accordingly, the parties jointly request that the Court continue the stay in this case, and the parties will file a Joint Status Report within 60 days to update the Court on the status of their efforts to fully resolve this matter.

October 31, 2022

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney
General

PATRICIA M. McCARTHY.
Director

s/ Lawrence S. Sher

Lawrence S. Sher (D.C. Bar No. 430469)
REED SMITH LLP
1301 K Street NW
Suite 1000-East Tower
Washington, DC 20005
Telephone: 202.414.9200
Facsimile: 202.414.9299
Email: lshe@reeds.com

Of Counsel:

Gregory Vose (PA Bar No. 324912)
REED SMITH LLP
Reed Smith Centre
225 Fifth Avenue, Suite 1200
Pittsburgh, PA 15222
Telephone: 412.288.3131
Facsimile: 412.288.3063
Email: gvose@reeds.com

Attorneys for Plaintiffs

s/ Claudia Burke

CLAUDIA BURKE
Assistant Director

s/ David M. Kerr

DAVID M. KERR
Trial Attorney
Commercial Litigation Branch
Civil Division
U.S. Department of Justice
P.O. Box 480
Ben Franklin Station
Washington, DC 20044
Telephone: (202) 307-3390
Email: David.M.Kerr@usdoj.gov

OF COUNSEL:

ALBERT S. IAROSSI
Trial Attorney
Civil Division
U.S. Department of Justice

Attorneys for Defendant